Gan Chong Guan Transport Sdn Bhd v Ketua Pengarah Jabatan Pengangkutan Jalan Malaysia & Ors

HIGH COURT (MUAR) — SUIT NO 22–9 OF 2004
AHMADI ASNAWI JC
20 AUGUST 2008

Administrative Law — Remedies — Enforcement of public duties — Decision of public authority — Whether procedure applicable was by way of judicial review — Rules of the High Court 1980 O 53

Civil Procedure — Abuse of process — Action — Writ action commenced to challenge decision of public authority — Whether procedure adopted abuse of process of court — Whether option available to proceed either by way of writ action or judicial review — Rules of the High Court 1980 O 53

In 1998, the plaintiff purchased a vehicle bearing registration No JDW 3301 from Metro Cosmos Express Tours & Transport Sdn Bhd. It was a requirement of the first and second defendants that before the road tax for commercial vehicles may be renewed, the said vehicle must be examined every half yearly by the fifth defendant to ensure, inter alia, the authenticity/accuracy/correctness of the engine and chassis numbers. Throughout the duration, the said vehicle was first in the possession of Metro Cosmos and then the plaintiff and it went through not less than 14 examinations or inspections, conducted by the fifth defendant. All these examinations revealed that the chassis of the said vehicle was YV2A4A2A0G08800017. The above number was also recorded in the vehicle's *Perakuan Pendaftaran JPJ K2*. However, on 13 May 2002, when the plaintiff sent the said vehicle to the fifth defendant for examination for the purpose of changing its entire engine, it was discovered in the said examination that while the engine and chassis number were authentic and untampered, it nevertheless carried a chassis number which was different from the number as recorded on the vehicle's *Perakuan Pendaftaran JPJ K2*. The new chassis number discovered was —YV2F7A2A0GC880017. The plaintiff contended that the said discrepancy was caused by typographical error committed by any one or all of the defendants. The plaintiff herein prayed, inter alia, for a declaration and/or a mandatory order that the *Perakuan Pendaftaran JPJ K2* of the said vehicle be rectified and an order that the road tax in respect of the said vehicle be renewed. The defendants however, applied to strike out the plaintiff's writ action allegedly on the

ground of an abuse of the process of the court for failure to comply with the requirements of O 53 of the Rules of the High Court 1980 ('RHC'). A

Held, dismissing the plaintiff's claim with costs: B

(1) The procedures as laid down by O 53 of the RHC is exclusive to cases whereby applications by way of judicial review is mandated. In public law matters such as the plaintiff's application herein to challenge the decisions made by the first and second defendants which, no doubt are public authorities or where the plaintiff was seeking relief or remedy for C the infringements of rights protected by public law, the proper route was by way of an application for judicial review to declare that the decisions made thereunder were null and void. Such mechanism was only afforded by invoking the provisions of O 53 of the RHC. Failure to comply with the above procedure was an abuse of the process of the D court and an attempt to circumvent or evade the clear requirements of O 53 of the RHC (see paras 13–14 & 23).

(2) The first and second defendants could not be guilty of committing a typographical error when entering the details of the said vehicle's chassis E number in the *Perakuan Pendaftaran JPJ K2*. The first and second defendants wholly acted upon the details supplied by the person who first applied for the registration of the said vehicle and later the plaintiff himself and principally upon the findings of the physical examination conducted by the fifth defendant (see para 38). F

(3) There was no duty imposed upon the first and second defendants to themselves conduct a physical examination of the said vehicle to verify the findings of the fifth defendant. The fifth defendant had been legally and properly entrusted to carry out this statutory function on behalf of the first and second defendants. It had not been shown anywhere by the G plaintiff that the fifth defendant had miserably failed to carry out this statutory function according to law. Further, the fourth defendant could not be vicariously liable for a liability that did not exist among its agencies (see para 38).

(4) The procedure adopted by the fifth defendant in the examination of the H said vehicle was proper, regular and accurate. Hence, the fifth defendant was not in breach of its contractual obligations or any statutory or common law duty. Apart from the above, the plaintiff had no cause of action against the sixth defendant because they had sold the vehicle to I Metro Cosmos and not to the plaintiff (see para 51).

Observation:

The court will always look upon very seriously against any act that defies its order. This is because obedience to the order of the court is the very

foundation of our judicial and legal system. If any member of the public is 'at liberty' to disobey a court's order, then the judicial and legal system will collapse; and so will law and order. But the present case had a special aggravating element and that was the manner the act of disobedience was done by the respondents. It had an element of subtlety and cunningness. By engaging lawyers and other professionals and invoking the legal process, the acts have an outward appearance of professionalism, sophistication and legality. Such a modus operandi often makes the victim and, indeed, the judicial and legal system itself, helpless. Because of the subtle method employed and the ruthless utilisation of the court process, it is often an uphill task for the aggrieved party to convince a court of law that, behind the façade of 'legality' employed by his adversary, he is in fact being victimised or being mercilessly and unjustly deprived the fruits of his litigation; unless the victim is a person of means (like the plaintiff in the present case, being a bank with financial resources at its disposal) and able to employ an able prosecutor.

[Bahasa Malaysia summary

Pada tahun 1998, plaintif telah membeli satu kenderaan yang mempunyai nombor pendaftaran JDW 3301 daripada Metro Cosmos Express Tours & Transport Sdn Bhd. Ia adalah satu keperluan bagi defendan-defendan pertama dan kedua bahawa sebelum cukai jalan bagi kenderaan-kenderaan komersial boleh diperbaharui, kenderaan tersebut mesti diperiksa setiap setengah tahun oleh defendan kelima untuk memastikan, di antaranya, ketulenan/ketepatan nombor-nombor enjin dan cesi. Sepanjang tempoh tersebut, kenderaan tersebut pada mulanya dalam milik Metro Cosmos dan kemudiannya plaintif dan ia melalui tidak kurang dari 14 ujian atau pemeriksaan, yang dilakukan oleh defendan kelima. Semua ujian ini menunjukkan bahawa cesi kenderaan tersebut adalah YV2A4A2A0G08800017. Nombor di atas juga direkodkan di dalam Perakuan Pendaftaran JPJ K2 kenderaan tersebut. Walau bagaimanapun, pada 13 Mei 2002, apabila plaintif menghantar kenderaan tersebut kepada defendan kelima untuk ujian dengan tujuan untuk menukar keseluruhan enjin, didapati dalam ujian tersebut walaupun nombor-nombor enjin dan cesi adalah tulen dan tidak diusik, ia walau bagaimanapun membawa nombor cesi yang berlainan daripada nombor yang direkodkan di dalam Perakuan Pendaftaran JPJ K2. Nombor cesi baru yang ditemui adalah —YV2F7A2A0GC880017. Plaintif menegaskan bahawa percanggahan tersebut adalah disebabkan oleh kesilapan menaip yang dilakukan oleh seorang atau kesemua defendan-defendan. Plaintif di sini memohon, antara lain, bagi satu deklarasi dan/atau satu perintah mandatori bahawa Perakuan Pendaftaran JPJ K2 kenderaan tersebut diperbetulkan dan satu perintah bahawa cukai jalan kenderaan tersebut diperbaharui. Defendan-defendan walau bagaimanapun, memohon untuk membatalkan writ plaintif dengan

mendakwa di atas alasan penyalahgunaan kuasa mahkamah kerana gagal untuk mematuhi keperluan-keperluan A 53 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). A

B

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Prosedur-prosedur seperti yang dinyatakan oleh A 53 KMT adalah eksklusif kepada kes-kes di mana permohonan-permohonan dengan cara semakan kehakiman mendapat mandat. Dalam hal-hal undang-undang awam seperti permohonan plaintif di sini untuk mencabar keputusan yang dibuat oleh defendan-defendan pertama dan kedua yang mana, tidak dinafikan adalah autoriti-autoriti awam atau di mana plaintif memohon relif atau pampasan bagi pencabulan hak-hak yang dilindungi oleh undang-undang awam, saluran yang betul adalah melalui permohonan untuk semakan kehakiman untuk mengisytiharkan keputusan-keputusan yang dibuat terlebih dahulu itu adalah terbatal dan tidak sah. Mekanisme sedemikian hanya diberikan dengan membangkitkan A 53 KMT. Kegagalan untuk mematuhi prosedur-prosedur di atas adalah satu penyalahgunaan proses mahkamah dan cubaan untuk memintasi atau mengelak keperluan-keperluan jelas A 53 KMT (lihat perenggan 13–14 & 23). C D E

(2) Defendan-defendan pertama dan kedua tidak mungkin bersalah melakukan kesilapan menaip apabila memasukkan butir-butir nombor cesi kenderaan tersebut ke dalam Perakuan Pendaftaran JPJ K2. Defendan-defendan pertama dan kedua secara keseluruhannya bertindak berdasarkan butir-butir yang diberikan oleh orang yang pertama kali memohon untuk pendaftaran kenderaan tersebut dan kemudiannya plaintif sendiri dan secara prinsipnya berdasarkan penemuan ujian fizikal yang dilakukan oleh defendan kelima (lihat perenggan 38). F G

(3) Tidak terdapat tanggungjawab ke atas defendan-defendan pertama dan kedua untuk mereka sendiri melakukan ujian fizikal ke atas kenderaan tersebut untuk mengesahkan penemuan-penemuan defendan kelima. Defendan kelima telah diberi kepercayaan di sisi undang-undang dan adalah secara betulnya untuk menjalankan tugas statutori bagi pihak defendan-defendan pertama dan kedua. Ia tidak ditunjukkan di mana-mana oleh plaintif bahawa defendan kelima telah gagal dengan teruknya dalam menjalankan tugas statutori menurut undang-undang. Seterusnya, defendan keempat tidak boleh secara vikarius bertanggungjawab bagi satu liabiliti yang tidak wujud dalam agensi-agensinya (lihat perenggan 38). H I

A (4) Prosedur yang diguna pakai oleh defendan kelima dalam ujian ke atas kenderaan tersebut adalah betul, biasa dan tepat. Oleh itu, defendan kelima tidak melanggar tanggungjawab-tanggungjawab kontraknya atau mana-mana tugas statutori atau *common law*. Selain dari di atas, plaintif tidak mempunyai kausa tindakan terhadap defendan keenam
B kerana mereka telah menjual kenderaan tersebut kepada Metro Cosmos dan tidak kepada plaintif (lihat perenggan 51).

Pemerhatian:

Mahkamah akan selalu memandang secara serius terhadap mana-mana
C tindakan yang mengingkari perintahnya. Ini adalah kerana kepatuhan kepada perintah mahkamah adalah asas kepada sistem kehakiman dan undang-undang kita. Jika sesiapa ahli masyarakat 'secara bebas' mengingkari perintah mahkamah, maka sistem kehakiman dan undang-undang akan runtuh, begitu juga undang-undang dan ketenteraman. Tetapi kes ini
D mempunyai satu elemen keterlaluan yang khas iaitu cara di mana tindakan mengingkari yang dilakukan oleh responden-responden. Ia mempunyai elemen ketakketaraan dan kelicikan. Dengan menggunakan khidmat peguam dan profesional lain dan membangkitkan proses undang-undang, tindakan itu mempunyai penampilan luaran yang profesional, sofistikated dan
E keesahan. Modus operandi sedemikian selalunya membuatkan mangsa, dan juga sistem kehakiman dan undang-undang itu sendiri, tidak berupaya. Disebabkan cara tidak ketara yang digunakan dan penggunaan proses mahkamah secara tanpa belas kasihan, ia adalah selalunya satu tugas mencabar bagi pihak mangsa untuk meyakinkan mahkamah bahawa,
F di sebalik penampilan 'kesahan' yang digunakan oleh pihak lawan, dia sebenarnya menjadi mangsa atau tanpa belas kasihannya dan tidak adil tidak dibenarkan mendapat hasil dari litigasinya, kecuali mangsa adalah seseorang yang berkemampuan (seperti plaintif dalam kes ini, sebagai satu bank dengan sumber kewangan untuk kegunaannya) dan mampu menggunapakai
G khidmat pendakwa.]

Notes

For a case on enforcement of public duties, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) para 572.

H For cases on abuse of process in general, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 9–21.

Cases referred to

Bencon Development Sdn Bhd v Majlis Perbandaran Pulau Pinang & Ors
I [1999] 2 MLJ 385, HL (refd)

Cocks v Thanet District Council [1982] 3 All ER 1135, HL (refd)

O'Reilly v Mackman [1982] 3 All ER 1124, HL (refd)

Pendaftar dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v KS South Motor Sdn Bhd [2000] 2 MLJ 540, CA (refd)

Robert Cheah Foong Chiew v Lembaga Jurutera Malaysia [2005] 4 AMR 80, CA (refd)
Sivarasa Rasiah v Badan Peguam Malaysia & Anor [2002] 2 MLJ 413; [2002] 2 AMR 1900, CA (refd)
Subramaniam a/l Vythilingam v The Human Rights Commission of Malaysia & Ors [2003] MLJU 94; [2003] 6 CLJ 175, HC (refd)
Sugumar Balakrishnan v Chief Minister State of Sabah & Anor [1989] 1 MLJ 233, HC (refd)
Teh Guan Teik v Inspector General of Police & Anor [1998] 3 MLJ 137, FC (refd)
TR Lampoh ak Dana & Ors v Government of Sarawak [2005] 6 MLJ 371, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 25, 25(2), Schedule para 1
Road Transport Act 1987 ss 11, 126
Rules of the High Court 1980 O 53
Rules of the Supreme Court [UK] O 53

KH Tan (KH Tan & Co) for the plaintifflappellant.
Syahliza bt Warnoh (Senior Federal Counsel, Attorney General's Chambers) for the first, second, third and fourth defendants.
Khairul Azam (Azam Lim & Pang) for the fifth defendant.
Lee Seng Wai (Lee Seng Wai & Co) for the sixth defendant.

Ahmadi Asnawi JC:

[1] Sometimes in 1998, the plaintiff purchased vehicle No JDW 3301 ('the said vehicle') from Metro Cosmos Express Tours & Transport Sdn Bhd ('Metro Cosmos'). The particulars of the said vehicle appearing on its Registration Certificate JPJ K2 (Perakuan Pendaftaran) at p 15 of *Lampiran 44* are as follows:

No enjin:	7D 7IF 914 558 558
No Chassis:	YV 2A4A2A0G08800017
Buatan:	Volvo
Nama Model:	FL 7/34
Keupayaan Enjin:	6700 SP
Tahun Dibuat:	1991
Tarikh Pendaftaran:	1 March 1996

[2] It is a requirement of the first and second defendants that before the road tax (Lesen Kenderaan Motor ('LKM') for commercial vehicles may be renewed, the said vehicle must be examined every half yearly by the fifth

defendant to ensure among others the authenticity/accuracy/correctness of the engine and chassis numbers. In compliance of the same, the plaintiff regularly sent the said vehicle to the fifth defendant for examination every half yearly. The said vehicle got through the said examinations by the fifth defendant with the remarks 'Lulus'.

[3] Through out the duration the said vehicle was in the possession of Metro Cosmos and the plaintiff, the said vehicle went through not less than 14 examinations or inspections, conducted by the fifth defendant. In all these examinations including the first examination prior to the registration of the said vehicle conducted on 13 February 1996, the said examinations revealed that the chassis of the said vehicle bears the following number: YV2A4A2A0G08800017. This is also the number recorded in the vehicle's *Perakuan Pendaftaran JPJ K2*.

[4] However on 13 May 2002 when the plaintiff sent the said vehicle to the fifth defendant for examination for the purpose of changing its entire engine, it was discovered in the said examination (*Pemeriksaan Berkala dan Pemeriksaan Khas—Laporan 2*) that while the engine and chassis numbers were authentic and untampered, it nevertheless carried a chassis number which was different from the number as recorded on the vehicle's *Perakuan Pendaftaran JPJ K2* and the number gathered from the previous 14 examinations. The new chassis number discovered was — YV2F7A2A0GC880017. For ease of reference, the discrepancy could be tabulated in the following table:

Perakuan Pendaftaran (1 March 1996) base on examination on 13 February 1996	YV2A4A2A0G08800017
Lapuran B2 base on examination on 13 May 2002	YV2F7A2A0GC880017

[5] It was the plaintiff's contention that the said discrepancy was caused by typographical error committed by any one or all of the defendants herein as a result of their omissions, negligence, breach of statutory, contractual and/or common law duties. On account of the same the plaintiff claimed to have since suffered losses when they were not allowed to renew their *Lesen Kenderaan Motor*, effectively rendering the said vehicle grounded, unable to neither use nor sell the said vehicle. The plaintiff further avers that despite repeated requests and appeals the first and second defendants refused to rectify the said discrepancy or typographical error as found in the said *Perakuan Pendaftaran JPJ K2*. The first and second defendant have also refused to renew the plaintiff's *Lesen Kenderaan Motor* of the said vehicle due to the said discrepancy.

[6] Thus, vide para 28 of the statement of claim the plaintiff prays, among others, the following reliefs/orders:

(a) Declaration and/or mandatory order that the *Perakuan Pendaftaran JPJ K2* of the said vehicle be rectified so that the chassis number stated therein shall correctly reflect the number as appearing on the body of the vehicle and be entered as YV2F7A2A0GC880017;

(b) An order that the *Lesen Kenderaan Motor* (road tax) in respect of the said vehicle be renewed and that the plaintiff be allowed to continue with the use of the said vehicle;

(c) An order that the plaintiff be allowed to apply for a new carriage license 'A' in respect of the said vehicle;

(d) Special damages;

(e) General damages.

[7] In para 17 of their statement of defence, the first, second, third and fourth defendants contended that the reliefs sought by the plaintiff in para 28 (a), (b) and (c) are in essence against the requirements of Order 53 of the Rules of the High Court 1980 ('the RHC') and that no prior leave was obtained for the plaintiff to institute the same.

[8] It is thus the contention of the learned senior federal counsel ('SFC') for the first, second, third and fourth defendants that the plaintiff's writ action and failure to comply with the requirements of O 53 of the RHC is an abuse of the process of the court. Consequently the said prayers should be struck out.

[9] It is very obvious that the prayers sought by the plaintiff intimated above were grounded upon the first and/or second defendant's refusal to rectify the said discrepancy or typographical error relating to the said vehicle's chassis number as recorded in the vehicle's *Perakuan Pendaftaran JPJ K2*. It also emanates from the first and/or second defendant's refusal to renew the vehicle's *Lesen Kenderaan Motor*, conveyed to the plaintiff through their letter dated 18 November 2003 (p 38, *Lampiran 44*). Admittedly the decisions of the first and/or second defendant in respect of the same are decisions or acts of a public authority. What in effect the plaintiff is asking are orders in the form of mandamus, challenging the said decisions of the first and/or second defendant, well within the realm of the public law.

[10] The court's jurisdiction in respect of mandatory orders was conferred by s 25 of the Courts of Judicature Act 1964, read together with the Schedule and proviso thereto. Section 25(2) provides:

A without prejudice to the generality of subsection (1) the High Court shall have the additional powers set-out in the Schedule;

[11] The proviso to the section states:

B Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

[12] Meanwhile, para 1 of the Schedule states:

C Power to issue to any person or authority directions, orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any others, for the enforcement of the rights conferred by Part II of the Constitutions, or any of them or for any purpose.

D

[13] For these purposes, the procedure applicable is by way of an application for judicial review through the mechanism provided by O 53 of the RHC 1980. Pursuant to *gazette* notification PU (A) 342/2000 O 53 was amended in its entirety. The whole procedure is now called 'Application for E Judicial Review'. Unlike the old O 53 which is confined to only prerogative orders, the remedies now available under the new O 53 is wider, with the inclusion of reliefs specified in para 1 of the Schedule to the Courts of Judicature Act 1964 as well as declaratory orders and injunctions.

F **[14]** It is equally clear now that the new O 53 of the RHC is in pari materia with the provisions of the post 1977 O 53 of the English Rules of the Supreme Court. The extend of the application of this new O 53 in England is encompassed in the judgment of the House of Lords in *O'Reilly v Mackman* [1982] 3 All ER 1124. The relevant part of the headnote reads:

G Held — dismissing the appeal, that since all the remedies for the infringement of rights protected by public law could be obtained on application for judicial review, as a general rule it would be contrary to public policy and an abuse of the process of the court for a plaintiff complaining of a public law rights to seek redress by H ordinary action and that accordingly since in each case the only claim made by the plaintiff was a declaration that the board of visitors adjudication against the plaintiff was void, it would be an abuse of the process of the court to allow the actions to proceed and thereby avoid the protection afforded to statutory tribunals.

I **[15]** The same proposition was taken by the House of Lords in *Cocks v Thanet District Council* [1982] 3 All ER 1135. The issue is whether the respondent was entitled to proceed against the appellant for a declaration that the appellants owed him a duty to provide him with permanent accommodation or whether the respondent was required to apply for judicial

review of the appellant's decision. Lord Bridge of Harwick held that it would amount to an abuse of the process of the court for an unsuccessful applicant for accommodation under the 1977 Act to challenge the decision of the housing authority by way of declaration rather than by judicial review under O 53.

[16] Those propositions are also the proposition adopted by our courts in *Shaharuddin bin Ali & Anor v Superintendent of Lands and Surveys, Kuching Division & Anor* [2005] 2 MLJ 555 at p 566; [2004] CLJ 775, at p 787, His Lordship Clement Skinner J held that:

> Since the plaintiff's remedy to enforce or protect rights created or acquired or recognised in accordance with the provisions of the Land Code must be sought under the public law and not private law. That being the case, the plaintiff here should have proceeded to seek judicial review of the minister's decision and the first defendant's decision under O 53 of the RHC1980 ...

[17] At p 570 (MLJ); p 792 (CLJ), His Lordship continued:

> It was an abuse of process for the plaintiffs to resort to an action for declaration and thereby evade the requirements of O 53 of the RHC ...

[18] In *Arab Malaysian Finance Bhd v Steven Phoa Cheng Loon & Ors* [2003] 2 MLJ 115 at p 590; [2003] 1 CLJ 585 at p 616, His Lordship Gopal Sri Ram JCA said:

> Now assuming that there was a duty on the fourth defendant to act in a particular manner towards the property of the plaintiff post collapse, such duty must find its expression in public and not private law. Accordingly if there had been a failure on the part of the fourth defendant to do or not to do something as a public authority, the proper method is to proceed by way of an application for judicial review.

[19] In *Soonly Limes Factory Sdn Bhd v Pengarah Jabatan Pengangkutan Jalan Negeri Perak* [2006] 2 CLJ 676 His Lordship Mohd Azman Husin J at p 683 held that:

> Since the plaintiff's cause of action, namely the defendant's refusal to renew the road tax of the plaintiff's vehicle is grounded on public law, the plaintiff should have pursued his public law remedies through judicial review proceedings under O 53 of the RHC and not by way of originating summons.

[20] *Bencon Development Sdn Bhd v Majlis Perbandaran Pulau Pinang & Ors* [1999] 2 MLJ 385, *Subramaniam Vythilingam v The Human Rights Commission of Malaysia & Ors* [2003] 6 CLJ 175, *TR Lampoh ak Dana & Ors v Government of Sarawak* [2005] 6 MLJ 371 and *Robert Cheah Foong Chiew*

v Lembaga Jurutera Malaysia [2005] 4 AMR 80 all decided that if the plaintiff choose to challenge the act or decision of any public body or public authority under a public law by resorting to other forms of action other than by way of an application for judicial review under O 53 of the RHC, such action would amount to an abuse of process of the court.

[21] The plaintiff sought to rely upon the decisions in *Sugumar Balakrishnan v Chief Minister State of Sabah & Anor* [1989] 1 MLJ 233 and *Teh Guan Teik v Inspector General of Police & Anor* [1998] 3 MLJ 137 to strengthen his argument that the plaintiff could co-opt by way of judicial review or by way of declaration as is presently done here. However in my view the authorities cited were not exactly on point on account that the two cases were decided prior to the amendment to O 53 of the RHC in the year 2000. His Lordship Peh Swee Chin FCJ in *Teh Guan Teik* gave his reasons for not following *O'Reilly* in the following terms:

> The decision of *O'Reilly v Mackman* was not followed in the Malaysian courts, as clearly stated in *Sugumar Balakrishnan v Chief Minister of the State of Sabah & Anor* [1989] 1 MLJ 233. The reason why *O'Reilly v Mackman* was not followed is because our Rules of the High Court has not adopted the law reforms as embodied in O 53 of the Rules of the Supreme Court of England.

[22] With the amendment to O 53, this reasoning is no longer valid.

[23] As regards to *Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2002] 2 MLJ 413; [2002] 2 AMR 1900 which is also relied by the plaintiff, in my view the said authority does not postulate the notion that the plaintiff is at liberty to either choose to proceed by way of a writ action or by way of an application for judicial review under O 53. The appellant here infact proceeded its action by way of judicial review. Rather the issue for the court's determination was whether the appellant could consolidate its claim for declaration together with other remedies available. His Lordship Gopal Sri Ram JCA in allowing the appellant's appeal said:

> Bearing in mind the decision in *Trustees of the Dennis Rye Pension Fund & Anor v Sheffield City Council* [1997] 4 All ER 747 as was approved in *Steel v Secretary of State for the Home Department* [2000] 3 All ER 226, it is the view of this court that the appellant was entirely correct in invoking the provisions of O 53 of the RHC.
>
> A rule of court should not be interpreted in such a way as to result in unfairness or produce manifest injustice. Such manifest injustice would occur in this case if O 53 of the of the RHC were to be read restrictively so as to permit an applicant to claim a declaration only where he applies for it jointly with other remedy. Under para 1 of the Schedule to the Courts of Judicature Act 1964, the courts have the power to issue such orders and grant such relief as is appropriate to the particular circumstances of a given case.

[24] In the light of the authorities enumerated above it is my view that the procedures as laid down by O 53 of the RHC is exclusive to cases whereby applications by way of judicial review is mandated. In public law matters such as the plaintiff's application herein to challenge the decisions made by the first and second defendants which, no doubt are public authorities or where the plaintiff is seeking relief or remedy for the infringements of rights protected by public law, the proper route is by way of an application for judicial review to declare that the decisions made there-under is null and void. Such mechanism is only afforded by invoking the provisions of O 53 of the RHC.

[25] The rationale behind this principle is that the provisions are designed to protect those entrusted with the enforcement of public duties against spurious, unfounded and baseless allegations by way, as was outlined by Lord Diplock in *O'Reilly*:

(a) the need to obtain leave to apply;

(b) the need to file affidavits from the outset, so that the case has to be stated on oath and with the utmost good faith, an important safeguard against groundless or unmeritorious claims in contrast with the unsworn pleadings in an ordinary action;

(c) the court's power on granting leave to impose terms as to costs or security;

(d) very speedy procedure, available in urgent cases within a matter of days rather then months; and

(e) the time limit, now reduced to 40 days and extended to all forms of relief

[26] In my view, failure to comply is an abuse of the process of the court and an attempt to circumvent or evade the clear requirements of O 53 of the said RHC.

[27] It is also the submission of the plaintiff that the first, second, third and fourth defendants cannot at this stage raise the issue of non-compliance of O 53 requirements on the grounds that this issue is not included in *'Isu-isu Untuk di Bicarakan — Lampiran 52'*. In this regard I am with the learned SFC's submission that *Lampiran 52* relates to issues of facts agreed by the parties to be tried during the trial whereas issues of non-compliance of legal requirements are matters of law to be ventilated at the stage of submission or at any stage of the proceedings no witnesses are required to testify on matters of law and the exclusion of the same in *Lampiran 52* does not prevent the said

defendants from arguing or raising the same at the submission stage. Additionally there was no issue that the plaintiff was taken by surprise at this line of argument for the said defendants had plainly pleaded the same in their statement of defence as indicated in para 17 of the same.

[28] Equally the failure of the first, second, third and fourth defendants to take steps to strike-out the writ and statement of claim on grounds of non-compliance at the earliest possible stage of the proceedings is no ground to restraint the said defendant from raising the issue now. This issue is part of the said defendants' defence. The issue was specifically pleaded in their pleadings They have sufficiently communicated to the plaintiff the grounds and facts they are relying to defeat the plaintiff's claim. There is nothing in law making it mandatory for the defendants to initiate striking out proceedings on account that the plaintiff had abused the process of the court. That is only an option which is best left to the defendants to decide when to have it raised.

[29] For all the reasons given, I refused and dismissed the plaintiffs prayers as embodied in para 28(a), (b) and (c) of the plaintiff's statement of claim.

[30] As regards to the liabilities of the parties herein, the following are my findings.

AS AGAINST THE FIRST AND SECOND DEFENDANT

[31] Puspakom Sdn Bhd (fifth defendant) is a company licensed by the Transport Minister to conduct examinations or inspections of motor vehicles on behalf of the first and second defendants under s 126 of the Road Transport Act 1987, for purposes of motor vehicle registration and other related matters By virtue of the same, the first and second defendants no longer conducts any motor-vehicle examination or inspection on their own. They relied solely on the examinations or inspections conducted by the fifth defendant in exercising and carrying out their statutory functions and duties.

[32] DW-1 for the first and second defendants, testified that the motor-vehicle in issue (JDW 3301) was registered on 1 March 1996. Prior to the registration, as the said vehicle is a commercial vehicle, the owner or applicant will have to produce before the *Jabatan Pengangkutan Jalan* ('JPJ') for the JPJ's perusal *Borang JPJ K1*, *Lapuran Pemeriksaan Awalan (PG 11A) oleh Puspakom*, *Borang Kastam 1*, *Lesen Import*, *Salinan Kad Pengenalan Pemohon*, *Daftar Syarikat Pemohon*, *Surat Kelulusan Permohonan Baru Kenderaan Perdagangan dari Lembaga Pelesenan Kenderaan Perdagangan* ('LPKP') and *Surat Tuntutan Hakmilik Daripada Bank*.

[33] The *Lapuran Pemeriksaan Awalan* by Puspakom was also submitted by the applicant. It was dated 13 February 1996 and exhibited at pp 1 and 2 of *Ikatan Dokumen Defendan Pertama hingga Keempat*, marked *Lampiran 49*. This *Lapuran Pemeriksaan Awalan* states that the chassis number of the said vehicle as found and reported by the fifth defendant to be YV2A4A2A0G08800017.

[34] The JPJ proceded to register the said vehicle based upon the documents and details submitted by the applicant as well as upon the information recorded by the fifth defendant in their *Lapuran Pemeriksaan Awalan* after they have conducted a physical examination of the said vehicle. The JPJ themselves does not conduct any physical examination of the said vehicle. They were not under any duty to do so

[35] DW-1 added that the ownership of the said vehicle was transferred to the plaintiff on 8 June 1998. For this purpose, the plaintiff is to submit to the JPJ *Borang JPJ K3*, *Salinan Kad Pengenalan Penjual dan Pembeli*, *Daftar Syarikat*, *Surat Pelepasan Tanggungan* and *Surat Tuntutan Hakmilik Daripada Bank*. The documents were as shown at pp 5–7 *Lampiran 49* and pp 3–4 *Ikatan Dokumen Tambahan Defendan Pertama hingga Keempat*, marked as *Lampiran 54*. The chassis number of the said vehicle recorded in the some of the documents submitted by the plaintiff also carried the No YV2A4A2A0G08800017.

[36] DW-1 also testified that for the purpose of issuing the said vehicle's *Lesen Kenderaan Motor*, the plaintiff is duty bound to produce a new *Lapuran Pemeriksaan Awalan* by Puspakom. The physical examination of the said vehicle by the fifth defendant was done on 11 June 1998. Again the examination by the fifth defendant of the said vehicle on this instant shows that the said vehicle carried the same chassis No YV2A4A2A0G08800017, consistent with the findings of the first examination conducted on 13 February 1996 and the number recorded on the said vehicle's *Perakuan Pendaftaran JPJ K2* issued on 1 March 1996.

[37] DW-1 further testified that the registration of the said vehicle does not depend upon the details provided by *Borang Kastam 1*. Equally, the accuracy of the details in the *Borang Kastam 1* is irrelevant. *Borang Kastam 1* is only material to confirmed that the said vehicle is an imported one.

[38] Based on the evidence enumerated above, it is my findings that the first and second defendants cannot be guilty of committing a typographical error when entering the details of the said vehicle's chassis number in the *Perakuan Pendaftaran JPJ K2* of the same as alleged by the plaintiff. The first and second defendants wholly acted upon the details supplied the person who

first applied for the registration of the said vehicle and later the plaintiff himself and principally upon the findings of the physical examination conducted by the fifth defendant. There is no duty imposed upon the first and second defendants to themselves conduct a physical examination of the said vehicle to verify the findings of the fifth defendant. The fifth defendant has been legally and properly entrusted to carry out this statutory functions on behalf on the first and second defendants. It has not been shown any where by the plaintiff that the fifth defendant has miserably failed to carry out this statutory functions according to law.

[39] According to DW-4 there were not less than 14 physical examinations conducted upon the said vehicle by the fifth defendant between the first *pemeriksaan awalan* on 13 February 1996 prior to the registration of the said vehicle and the examination conducted on 13 May 2002 done at the request of the plaintiff for the purpose of changing the entire engine of the said vehicle. These 14 examinations were conducted on different dates, by different vehicle examiners of the fifth defendant and at different locations of the fifth defendant's premises. Except for the examination conducted on the 13 May 2002, the 14 examinations conducted earlier revealed similar findings ie the chassis of the said vehicle carried the No YV2A4A2A0G08800017. The said examinations also did not reveal that the said chassis number had been tampered with in any manner. The consistency of these findings negates any notion that the examinations were not diligently and properly conducted. On the balance of probabilities, these 14 different vehicle examiners cannot be committing the same mistakes over and over ie coming up with the same chassis No YV2A4A2A0G08800017 at 14 different physical examinations, on 14 different dates and at various different locations of the fifth defendant's premises between 13 February 1996 and 13 May 2002. It also negates any notion of negligence, breach of statutory duties under the Road Transport Act, breach of duty of care, breach of common law duty of care, breach of duty under s 11 of the Road Transport Act ie to ensure the accuracy and validity of the particulars, information and details contained in the *Perakuan Pendaftaran JPJ K2* of the said vehicle, in particular its chassis number and other allegations as contained is para 20(a) to (h) of the plaintiff's statement of claim on the part of the first and second defendant.

[40] The authority cited by the plaintiff ie *Pendaftar dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v KS South Motor Sdn Bhd* [2000] 2 MLJ 540 has no application here for there is no evidence that there was tampering or falsification of the records of the said vehicle in the possession of the JPJ by persons known or unknown to JPJ or that the particulars, information and details therein were inaccurate or invalid or incorrect or had been tampered with to warrant the findings that the first and second defendant had failed in their duty to maintain a proper register for all vehicles registered under the

Road Transport Act 1987 and to ensure that such register shall contain particulars, information and details which would assist a bona fide purchaser or persons interested or have dealings in vehicles.

[41] Equally it is never the case here that the first or second defendants or JPJ in general had supplied incorrect, inaccurate or invalid particulars or information relating to the records of the said vehicle. It is also not the case here that the records of the said vehicle in the possession of the first or second defendant or JPJ in general were incorrect or inaccurate or invalid or in particular, that the wrong chassis number was entered into the records of the said vehicle. What was supplied to the JPJ either by the person who first registered the vehicle or subsequently by the plaintiff or the fifth defendant were accurate and correct all along until the examination of the vehicle on the 13 May 2002, where it was found that the said vehicle now carried a different chassis number, contrary to the number revealed and recorded in the previous 14 physical examinations. In the circumstances on no account could the first or second defendant be accounted to account for the discrepancy. The said discrepancy obviously emanates from the said vehicle which was all the while in the possession of the plaintiff and not from the records of the said vehicle in the possession of the first or second defendant. In my view on the balance of probabilities, the first and second defendants carry no blame at all for the said discrepancy. As reiterated earlier the 14 different vehicle examiners cannot be committing the same mistakes, ie coming up with the same chassis number at 14 different physical examinations, on 14 different dates and at various different locations of the fifth defendant's premises. Consequently the first and second defendants are not liable at all for the mess in which the plaintiff is now in.

AS AGAINST THE THIRD DEFENDANT

[42] The plaintiff conceded that the third defendant carried no liability at all in this case.

AS AGAINST THE FOURTH DEFENDANT

[43] In the light of the findings of liability against the first and second defendants enumerated above and the concession against the liability of the third defendant, the fourth defendant thus cannot be vicariously liable for a liability that does not exist among its agencies.

AS AGAINST THE FIFTH DEFENDANT

[44] As said earlier, in respect of registration of motor vehicles, the fifth defendant was entrusted with the duty of carrying out the functions of vehicle

examinations and other related matters thereto on behalf of the first and second defendants or in general terms, the JPJ, by virtue of s 126 of the Road Transport Act 1987. This much was agreed by the plaintiff. the fifth defendant will issue the certificate of examination only upon examination of the vehicle by physical or visual means. The certificate and details of the examination will thereafter be forwarded to the JPJ for the registration of the vehicle and the relevant datas will be entered or recorded in the vehicle's *Perakuan Pendaftaran JPJ K2*.

[45] The evidence in this case presently before me revealed that the said vehicle (JDW 3301) was first examined by the fifth defendant on 13 February 1996. They found the chassis number for the said vehicle to be YV2A4A2A0G08800017. Thereafter during the ownership of Metro Cosmos, the said vehicle went through a total of three examinations, twice at the fifth defendant's Cawangan Padang Jawa in Klang and once at the fifth defendant's Cawangan Muar. Again after the ownership of the said vehicle was transferred to the plaintiff, it went through a total of 11 examinations, on six occasions at the fifth defendant's Cawangan Melaka and occasions at the fifth defendant's Cawangan Muar.

[46] In all these 14 examinations the results were the same ie the said vehicle carried the same chassis number as revealed in the first examination on 13 February 1996. This number was also the same number recorded/entered in said vehicle's *Perakuan Pendaftaran JPJ K2*. In the event, in my view, on the balance of probabilities the same results or findings obtained by the various vehicle examiners of the fifth defendant, at various dates and at various premises of the fifth defendant's branches clearly indicated that the said examinations were properly conducted and done and the results or findings obtained were correct and accurate. As said earlier it is highly improbable that those different or various vehicle examiners could have committed the same mistakes in their findings ie coming up with the same chassis No YV2A4A2A0G08800017 at 14 different physical examinations, on 14 different dates and at various premises of the fifth defendant's branches.

[47] The procedures as regards to the examination of the said vehicle which was done manually and visually was challenged by the plaintiff. It was alleged that the procedures were inadequate, giving rise to inaccurate result and uncertainties. However the fifth defendant adopted three manual procedures altogether namely *Manual Procedure Penganalisaan Bagi Syarikat Pemeriksaan*

Kenderaan Berkomputer, *Manual Operasi Pemeriksaan Khas* and *Manual Operasi Pemeriksaan Visual Mekanikal Bahagian Atas Kenderaan*. Apart from bare allegations, the plaintiff did not produce any evidence to show that the various examinations of the said vehicle done by manual or visual means were inadequate or faulty, resulting in inaccurate findings. There is no basis at all to act upon to suggest that the procedures adopted by fifth defendant in the examinations of the said vehicle is inadequate or inaccurate.

[48] DW-5 conducted a visual examination of the said vehicle on 13 May 2002. He found the chassis number of the said vehicle to be different from the one recorded in the said vehicle's *Perakuan Pendaftaran JPJ K2*. The number he found was YV2F7A2A0GC880017. There were two alphabetical and two numerical differences in the number now found, namely *F* instead of *A*, 7 instead of 4, *C* instead of *O* and one *O* now not existing. Thereafter the said vehicle was again sent for examination on 2 more occasions for further confirmation, namely on 15 May 2002 and 6 June 2002. Nevertheless the two further examinations merely confirmed the findings of DW-5's examination on 13 May 2002. The said vehicle was then sent to the Jabatan Kimia for further verification. The Jabatan Kimia which adopted a different procedure which is a lot more scientific and technologically ahead in the examination of the chassis number of the said vehicle also confirmed the findings of DW-5's examination. The number they found was the same as that found by DW-5. The Jabatan Kimia also added that the said number was not tampered.

[49] The findings or result of the Jabatan Kimia's examination which adopted a different procedure but arriving at the same findings as that conducted by the fifth defendant clearly indicated that the procedures adopted by the fifth defendant in the examination of the said vehicle is equally proper, regular and accurate. Again in such event there is no basis to suggest that the procedures adopted by the fifth defendant is inadequate, prone to inaccuracies and mistakes as alleged by the plaintiff.

[50] In my view the discrepancy in the findings of DW-5's examination and also the subsequent examinations both by the fifth defendant and Jabatan Kimia with the 14 previous examinations and records appearing in the said vehicle's *Perakuan Pendaftaran JPJ K2*, is a major discrepancy. If at all it exists all these while, it could have been easily spotted by the previous examiners It makes no sense for none of them to have been able to spot the discrepancy much earlier if it really does exist. Consequently the only irresistible inference is that the chassis of the said vehicle was replaced prior to the examination conducted by DW-5 on 13 May 2002.

[51] In the event it is thus my findings that no negligence could be attributed upon the fifth defendant when they first examined the said vehicle 13 other subsequent examinations or upon the examination conducted on 13 May 2002. Consequentially I find that the chassis number of the said vehicle as recorded/entered in the vehicle's *Perakuan Pendaftaran JPJ K2* based upon fifth defendant's examinations of the said vehicle is correct and accurate and that all the examinations conducted by the fifth defendant were proper and the result or findings obtained therefrom were also accurate. There is on the facts, no typographical error involved. It is thus my further findings that the fifth defendant was not in breach of its contractual obligations to the plaintiff nor was the fifth defendant in breach of any duty of care at common law. Neither was the fifth defendant in breach of any statutory functions or statutory duties imposed by law. In essence the fifth defendant equally shoulders no liability at all.

AS AGAINST THE SIXTH DEFENDANT

[52] It is my findings that the plaintiff has no cause of action against the sixth defendant. The sixth defendant did not sell the said vehicle to the plaintiff but to Metro Cosmos. The initial registration of the said vehicle was also not done by the sixth defendant.

[53] The fact that the sixth defendant issued a declaration containing wrong particulars and mistakes to the third defendant at the time of importing the said vehicle into the country is irrelevant on account that the first and second defendants or JPJ in general, did not rely at all upon the said *Borang Kastam 1* when the said vehicle was registered but among others upon the examination and result of the examination of the said vehicle by the fifth defendant. The said *Borang Kastam 1* is only relevant to confirmed that the said vehicle is an imported vehicle and a different classification of the vehicle is thereafter given by the JPJ.

[54] Upon the said premise I also absolved the sixth defendant of any liability.

CONCLUSION

The plaintiff carried the burden to prove his claim and allegations against all the six defendants upon the evidence adduced I am satisfied that on the

balance of probabilities, the plaintiff failed to discharge the said burden. Consequently I dismissed the plaintiff's claim in its entirety with costs.

Plaintiff's claim dismissed with costs.

Reported by Ashgar Ali Ali Mohamed